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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,709	12/12/2001	Alan Glen Solheim	GSH 08-893504	2300
30594	7590	08/24/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			PAYNE, DAVID C	
P.O. BOX 8910			ART UNIT	PAPER NUMBER
RESTON, VA 20195			2638	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/021,709

Applicant(s)

SOLHEIM ET AL.

Examiner

David C. Payne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection. Upon a thorough re-reading of applicant's specification, it is evident that the applicant uses terminology that is vague and renders the claims indefinite, as discussed below.
2. Regarding 18, regarding applicant's assertion that the examiner relies on personal knowledge. The examiner disagrees. The examiner merely stated axiomatic information that is common knowledge to one of ordinary skill in the art. In this case, any monitor that tests a plurality of wavelengths, lacking any special processing devices, can only perform operations in sequence at a finite level. This is notoriously known to be true to of every uni-processor system. Regardless, one of ordinary skill in the art knows that a wavelength monitor as is Al-Salameh can test wavelengths individually sequentially.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "adequate" in claims 1 and 3 is a relative term which renders the claim indefinite. The term "adequate" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The applicant's specification, page 1 ¶ 0008, reads as follows:

[0008] According to an aspect of the invention, a method for evaluating connections in an agile network is provided, comprising: (a) for a switching node of

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the agile network, selecting a plurality of paths available between the switching node and all remaining nodes of the agile network; (b) for an available path, selecting a plurality of **adequate** wavelengths according to a wavelength performance parameter; (c) for each **adequate** wavelength, establishing the test connection along the path; and (d) at preset intervals, repeating step (c) for all **adequate** wavelengths, repeating steps (b) and (c) for all available paths, and repeating steps (a), (b) and (c) for all nodes of the agile network.

Applicant merely states that an adequate wavelength is selected according to a performance matter, while leaving the reader to speculate as to the exact criteria (i.e., how a performance parameter is used to designate which wavelengths are indeed adequate). It is insufficient to merely state a wavelength is adequate according to some performance parameter without specifically stating some definite relationship between the performance parameter and the measured item. This area of the specification (and the only area), which lends support for the claims, is a mere restatement of the claim without any further illumination.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Al-Salameh et al. US 6,317,231 B1 (Al-Salameh).

Re claim 18,

Al-Salameh disclosed the

A wavelength exerciser ((NCE (240 of Figure 2) and Optical Monitoring Unit (260 of Figure 2)) for an agile network, comprising: a path selector (NCE (240 of Figure 2)) for selecting a test path between a source node (NCE (240 of Figure 2)) and a destination node (200 of Figure 2); a fault finder (OA 284 of Figure 2, step 384 of Figure 3) for detecting a fault whenever said test connection fails (e.g., col./line: 8/5-10); and a test connection controller (NCE (240 of Figure 2, e.g., col./line: 6/30-35) for controlling operation of said path selector, said wavelength assignment module and said fault finder.

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Al-Salameh does not disclose the wavelength assignment module (NCE and OMU) as assigning successively a plurality of wavelengths to said test path for establishing a test connection along said test path. Al-Salameh merely disclosed that the OA monitors the spectrum of each channel (see e.g., step 384 of Figure 3). However, it would have been obvious to one of ordinary skill in the art at the time of invention to successively test each wavelength. One is motivated as such since, with the exception of expensive parallel processing, the typical hardware configuration is a single processor system that sequentially performs operations and must necessarily complete an operation before proceeding to the next operation, or wavelength testing in this case.

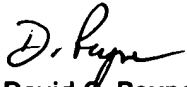
### **Conclusion**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (571) 272-3024. The examiner can normally be reached on M-F, 7a-4p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on (571) 272-3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dcp

  
David C. Payne  
Patent Examiner  
AU 2638